Gibraltar Society of Accountants

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Tax Faculty - Newsletter 1/2015

Clarification on various items

Date 26 March 2015

A meeting was held between members of the Tax Faculty of the Gibraltar Society of Accountants and the Commissioner of Income Tax and his senior management team on 10 February 2015, to discuss various matters. The Commissioner's position on these matters was as follows:

1 Dividends from non-taxable income

The Commissioner clarified as follows his interpretation of how the Income Tax Act 2010 applies to dividends whose original source is income not assessable to taxation in Gibraltar, taking into account the intention of the law as stated in the "Pre-Legislative Briefing Paper – The Government's response to comments received" of 2nd September 2010.

Where a dividend, or part of a dividend, is the distribution of profits that were assessable to tax in Gibraltar in the hands of the company that originally generated the income, then the dividend, or relevant part of the dividend is taxable in the hands of an ordinarily resident individual receiving the dividend.

Conversely, where a dividend, or part of a dividend, is the distribution of profits that were not assessable to tax in Gibraltar in the hands of the company that originally generated the income, then the dividend, or relevant part of the dividend is not taxable in the hands of an ordinarily resident individual receiving the dividend.

By way of example, possible scenarios include the following. These refer to the distribution of profits from the following sources to an individual who is ordinarily resident in Gibraltar:

- Interest income received by a Gibraltar company and taxed/taxable on that company either under Class 1A, or as trading income. Dividends from this source would be taxable in the hands of the recipient.

- Interest income received by a Gibraltar company which is not taxed/taxable on the company. Dividends from this source would not be taxable in the hands of the recipient.

- Dividend received by a Gibraltar company from a UK non-quoted company which trades outside Gibraltar and has no other income assessable to tax in Gibraltar. Dividends from this source would not be taxable in the hands of the recipient.

- Profits of a Gibraltar company from trading entirely outside Gibraltar (no income accrued in or derived from Gibraltar). Dividends from this source would not be taxable in the hands of the recipient.

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1 Dividends from non-taxable income (continued)

- Profits of a Gibraltar company from trading mostly outside Gibraltar (some income accrued in and derived from Gibraltar, some not). Dividends from this source would be allocated between income which was assessable to tax in Gibraltar at source, and income that was not assessable to tax in Gibraltar at source. Any part of the dividend that is attributed to income that was assessable to tax in Gibraltar on the company would be taxable in the hands of the recipient. Any part of the dividend that is attributed to income that was not assessable to tax in Gibraltar on the company would not be taxable in the hands of the recipient.

Where dividend income is not assessable to tax in the hands of an individual recipient, then no tax credit is available to the individual in respect of that dividend.

It is recognised by the Gibraltar Society of Accountants that there may be practical challenges in applying the above where source income includes a non-Gibraltar company

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2 HEPPS - commencement and termination of employment

The High Executive Possessing Specialist Skills Rules 2008 provide that an individual in respect of whom a certificate has been issued is charged to tax limited to the first £120,000 of assessable income (as defined in those rules) for a given year of assessment (Rule 7).

When a person commences employment under a HEPPS certificate at some point during the tax year, the legislation does not provide for any apportionment of the amount of annual tax payable by the HEPPS Individual under the Rules. Similarly, there is no apportionment when such an employee terminates his or her employment during a tax year.

As a concession, an apportionment is applied on a pro-rata basis to the number of months in the tax year in which the person is employed under the certificate. The month in which the employee takes up employment is included for these purposes as a full month. So, for example, if he/she commences on 30th of May, the month of May is included, so the apportionment applied would be 2/12. A similar rule is applied for the termination of employment. Legislation is being drafted along these lines, to bring it in line with current practice.

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3 Automatic information exchange with other jurisdictions - timing

This is contained in Section 5A of the Income Tax Act 2010, but in the interests of clarity the Commissioner confirmed:

- Income covered by these provisions is to be automatically notified to other jurisdictions in respect of any individuals resident in those jurisdictions by 31 December 2015.

- This will include information on the relevant income streams as stated in Section 5A from 1 July 2014 onwards.

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4 Accommodation provided for re-located individuals

This refers to the exemption from benefits-in-kind in respect of accommodation provided by an employer to a relocated employee which may apply pursuant to para 13(6) of Schedule 7 of the ITA 2010.

Confirmation was given on the following matters:

- The exemption from benefits-in-kind in respect of accommodation provided for a relocated employee in para 13(6) of Schedule 7 of the ITA 2010 may include the provision of accommodation in Spain.

- As a general guideline, up to the city of Malaga may be considered as within commuting distance of Gibraltar, though it is accepted that this is subjective and may alter according to circumstances. Locations inland or situated on the coast west of Gibraltar would be treated on a case by case basis.

- In principle, the payment of an accommodation allowance to an employee may be accepted as the provision of accommodation by an employer. However, if the allowance given exceeds the amount actually paid by the employee for his/her accommodation, the excess would be taxable as earnings.

We would emphasise that this exemption is subject to further conditions, one of which is a time limit of seven years from (broadly speaking) the date of re-location of the employee to Gibraltar.

5 Annuities received from an overseas annuity

An annuity received is treated the same as the receipt of a pension. So, provided that the Commissioner is satisfied that the payment is received from a bona-fide scheme and the recipient is over 60 years of age, it is taxed at 0%. Exceptions to this are where the income is from an annuity purchased with funds drawn down from an approved scheme imported from another jurisdiction (often referred to as "QROPS"), or from a Qualifying Non-UK Pension Scheme ("QNUPS"). These would be taxable at 2.5%.

6 Nil tax returns

Government is currently considering proposals to the effect that that all companies registered at Companies House as active (i.e., that are not struck off) would be required to submit a tax return.

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7 Loans to directors

The Chief Minister's Budget address in 2014 stated:

"….at present any employment-related loan made to a director, a shadow director or any connected person is treated as earnings from employment and is taxed as a benefit-in-kind……..I am therefore happy to announce that, with effect from 1 July 2014, all loans or advances made to a director, a shadow director or any connected person and the terms of the loan is such that an arms-length rate of interest is paid and that the loan agreement has received the approval of the Commissioner of Income Tax then such loans or advances shall not be treated as earnings from employment."

The Commissioner of Income Tax has further clarified that there is no formal approval process to be implemented in the forthcoming draft amendments to the legislation in respect of such loans.

It is understood that the reference to "approval" in the context of the speech was made in relation to the requirement that the Commissioner of Income Tax be satisfied that the terms of the loan agreement, including the rate of interest, are set equivalent to an arm's length transaction. In the circumstances, if the Commissioner is not satisfied in this regard, he would seek to deem the corresponding loan as a benefit and tax accordingly in accordance with the provisions of the Income Tax Act 2010.